

CHAPTER 46
STOCKBRIDGE-MUNSEE TRIBAL LAW
HOUSING

PART 1 **GENERAL PROVISIONS**

§ 46.1-1 **Applicability**

(A) The following Ordinance shall hereinafter be referred to as the "Tribal Housing Ordinance." It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing dwellings, or accommodations for human occupation and residence.

(B) The following arrangements are not governed by this Ordinance:

- (1) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (2) Transient occupancy in a hotel, motel, or other commercial lodging.

§ 46.1-2 **Jurisdiction**

(A) The jurisdiction of the Tribal Court of the Stockbridge-Munsee Community is extended over:

- (1) All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its Division of Community Housing, or any other entity of the Tribe.
- (2) All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

(B) The Stockbridge-Munsee Community Tribal Court shall have jurisdiction to hear claims brought under this Ordinance.

§ 46.1-3 **Purposes and Interpretation**

This Ordinance shall be liberally interpreted and construed to fulfill the following purposes:

- (A) To simplify, clarify, modernize, and revise the law governing the occupation of dwelling units and accommodations, as well as the rights, obligations, and remedies of the owners, sellers, lessors, landlords, lessees, tenants, and occupiers of such structures;
- (B) To preserve the peace, harmony, safety, health and general welfare of the people of the

Tribe and those permitted to enter or reside on the Reservation.

(C) To protect tribal housing by providing eviction procedures under this Ordinance and providing for evictions when necessary.

(D) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a tribal resource.

(E) To encourage landlords and tenants to use the procedures established under this Ordinance to provide a mechanism and a forum to resolve housing disputes.

(F) To avail the Tribe, tribal entities, and tribal members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by any federal agency or private lender.

(G) To strictly apply specific provisions of this Ordinance as necessary in order to obtain federal, state, tribal or private funding for tribal housing programs.

§ 46.1-4 Relation to other Laws

(A) Applicable Law: Unless affected or displaced by this Ordinance, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other state may be used a guide to supplement and interpret this Ordinance.

(B) Conflicts With Other Laws

(1) Tribal Laws: To the extent that this Ordinance may conflict with Stockbridge-Munsee tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances may govern over the provisions of this Ordinance if it has specific applicability and it is clearly in conflict with the provisions of this Ordinance.

(2) Federal Laws: Where a conflict may appear between this Ordinance and any statute, regulation, or agreement of the United States, the federal law may govern if it has specific application and if it is clearly in conflict with the provisions of this Ordinance.

(3) State Laws: To the extent that the laws of any state may be applicable to the subject matter of this Ordinance, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

§ 46.1-5 Definitions

As used in this Ordinance, the following words will have the meanings given them in this section unless the context otherwise clearly requires:

(A) **Action, suit or lawsuit, claim, complaint or defense** shall include any dispute between persons or entities which relates to the sale, rental, lease, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damages to such units, including the right to occupy them.

(B) **Borrower/Mortgagor** is the Tribe, any authorized agent of the Tribe, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) who has executed a mortgage as defined in this Ordinance or a Leasehold Mortgage as defined in this Ordinance.

(C) **Building or housing Ordinances** are any law, ordinance, or governmental regulation of the Tribe or an agency of the United States which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit. Where appropriate to the situation, standard or recognized building standards or Ordinances may be applied as building or housing Ordinances.

(D) **Drug-related criminal activity** means the illegal manufacture, sale distribution, use or possession with intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substance Act (2 U.S.C. § 802).

(E) **Dwelling or dwelling unit** is a structure or part of a structure that is used as a home, residence, or sleeping place by any person who maintains a household and is not for purposes of this Ordinance any public transient accommodation, such as a hotel room.

(F) **He/His**: the use of he/his means he or she, his or her, and the singular includes the plural.

(G) **Indian** is any person recognized as being an Indian or Alaska Native by any Tribe, or by the government of the United States.

(H) **Indian Country, the territorial jurisdiction, or the jurisdiction of the Tribe** shall include all lands owned by, held in trust for, leased, occupied, or otherwise controlled by the Tribe, as well as any such ownership or use by an entity of the Tribe; and those terms shall include any and all areas which may constitute the *Indian Country* of the Tribe under applicable provisions of its laws or the laws of the United States.

(I) **Landlord** is any person or entity or any agency of government that is the owner, lessor, or sublessor of a dwelling unit, and it also means a manager of any such dwelling unit, as well as the Division of Community Housing for purposes of low-rent or existing Mutual Help Home Ownership (HMO) programs.

(J) **Lease** is an agreement between two parties regarding the possession of real or personal property which gives rise to the landlord/tenant relationship or lessor/lessee relationship.

(K) **Leasehold Mortgage** is the mortgage of leased property given to secure a loan made under the auspices of any federal agency home buyer program or made by a private lender.

(L) **Leasehold Mortgage Foreclosure Proceeding** is a proceeding in the Tribal Court:

(1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or entity claiming through the Borrower(s)/Mortgagor(s), in a Lease for which a Mortgage has been given under the home purchase program of any federal or tribal agency or private lender; and

(2) To assign such Lease to the applicable federal or tribal agency or the agency's assignee.

(M) **Lender Designated Assignee** is any Lender as defined in this Ordinance may assign or transfer its interest in a Lease and/or Leasehold Mortgage to a Designated Assignee. Any time prior to such assignment, transfer or assumption the Lender must seek written approval from the Tribe of a proposed Designated Assignee.

(N) **Lender/Mortgagee** is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, or a U.S. government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee as pre-approved or approved by the Tribe.

(O) **Lessor** is the beneficial or equitable owner of property under a Lease for which a Mortgage, as defined in this Ordinance, has been given, or the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s).

(P) **Lessee** is the home buyer under any federal mortgage program or under the terms of a loan from a private lender (but not the Mutual Help program, under which the home buyer is considered a *tenant*.) The *lessee* may, for purposes of federal agency home mortgage programs, be the Tribe.

(Q) **Mohican Housing Commission (MHC)** is an advisory body, created by resolution #249-97 with the primary purpose of advising the Tribal Council on how to plan and implement housing strategy for the Stockbridge-Munsee Tribe. The MHC is governed by By-Laws adopted by Tribal Council Resolution #250-97.

(R) **Mohican Housing Commission By-Laws** are those By-Laws adopted by Tribal Council Resolution #250-97, such By-Laws to be attached to this Housing Ordinance and incorporated herein.

(S) **Mortgage** is a first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

| (T) **Mortgagor/Borrower** - see Borrower/Mortgagor.

(U) **Mortgagee/Lender** - see Lender/Mortgagee.

(V) **Nuisance** is the maintenance or allowance on real property of a condition which:

(1) Unreasonably threatens the health or safety of the public or neighboring land users; or

(2) Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(W) **Owner** is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(X) **Person** includes any individual or organization, and where the meaning of a portion of this Ordinance requires, it means a public agency, corporation, partnership, or any other entity recognized by the Tribe.

(Y) **Premises** is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, areas, and facilities intended for the use of tenants or the use of which is either promised or practiced for tenants.

(Z) **Rent** means all payments to be made to an owner or landlord for the lease, purchase, or occupancy of a dwelling under an express or implied agreement for the purchase or occupancy of it. For the purposes of this Ordinance, the term *rent* will be used to refer to payments to be made under any agreement for occupation of a dwelling, and includes all lease and occupancy agreements between the Tribe or any property owner or manager and any person. It shall also be deemed to include any payment due and owing for the purposes of any eviction due to a default in any occupancy agreement, purchase agreement, and other agreement for the rental or lease/purchase of housing.

(AA) **Rental agreement** means any agreement, written, oral, or by practice of the parties, as well as valid rules and regulations regarding the terms and conditions for any use or occupancy of a dwelling or premises. For the purposes of this Ordinance, it shall also include any agreement which governs the use and occupancy of a dwelling under a use and occupancy agreement, or any lease/purchase agreement under which a person has not yet achieved home ownership under that agreement. Rental agreements include all outstanding Mutual Help Home Ownership (MHHO) agreements.

(BB) **Reservation** is the Stockbridge-Munsee Community Reservation, Shawano County, Wisconsin, described generally as the townships of Bartelme and Red Springs, with the legal description as: T.28N.-R.13E and T.28N.-R.14E.

(CC) **Secretary** is the Secretary of the Department of the Interior.

(DD) **Subordinate Lienholder** is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Leasehold Mortgage under this Ordinance, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

(EE) **Tenant** is any person entitled to rent, purchase, or occupy a dwelling under an agreement to rent, occupy, or lease/purchase a dwelling and it includes any person actually occupying a dwelling that he or she does not own. It will also include any person of the same household of a tenant, including guests, actual occupiers, heirs or successors to any interest in a dwelling. Tenants include lessees/purchasers of any existing Mutual Help Home Ownership units.

(FF) **Tribal Court** is the Court as established by the laws of the Stockbridge-Munsee Community or such body as may now or hereafter be authorized by the laws of the Tribe to exercise the powers and functions of a Court of law.

(GG) **Tribal Housing Entity** is the Division of Community Housing, a subordinate entity of the Tribal Council, created by Resolution 249-97, for the purpose of constructing and maintaining dwellings for public use for administering block grant funds under NAHASDA and for dealing with all forms of Tribal Housing needs.

(HH) **Tribal Recording Clerk** is the director of the Tribal Real Estate program or such other person designated by the Tribe to perform the recording functions required by this document or any deputy or designee of such person.

(II) **Tribe** is the Stockbridge-Munsee Community.

(JJ) **Waste** is the spoilage or destruction by a tenant/lessee of land, buildings, gardens, trees, or other improvements which result in substantial injury to the lessor's interest in the property.

(KK) **Writ of restitution** means an order by the court requiring a person, usually the tenant, to return property, real or personal, to its rightful owner.

PART 2 **LANDLORD/TENANT RIGHTS, OBLIGATIONS AND REMEDIES**

§ 46.2-1 **Sources of Rights, Obligations, and Remedies**

The rights, obligations, and remedies of landlords, and tenants, as defined in this Ordinance, are contained in:

- (A) The laws of the Tribe;
- (B) Applicable statutes, regulations and agreements with agencies of the United States;
- (C) A lease, or other agreements with occupiers of dwellings;
- (D) Building or housing Ordinances;

(E) Other laws which are made applicable through the provisions of this Ordinance; or

(F) Contracts with private agencies.

§ 46.2-2 Effect of Any Agreement Regarding Dwellings

Unless an agreement or an applicable provision of the agreement is clearly contrary to this Ordinance or the laws identified in § 46.1-4 or § 46.2-1, the agreement or provision will govern the rights and obligations of any party before the Tribal Court, and the Court must grant the relief provided for in the agreement according to its terms. Where there is no written agreement, the intent of the parties expressed in their oral agreement or relationship will govern, as well as applicable provisions of this Ordinance.

§ 46.2-3 Landlord Rights

Each landlord under this Ordinance has the following rights:

(A) To be paid any rent or money due under an agreement within ten (10) calendar days from the agreed date of payment, or within ten (10) calendar days following the first day of the month in a month-to-month agreement for dwelling occupancy. Rent is payable without demand or notice at the time and place agreed upon by the parties. In the absence of a definite term in the agreement, the tenancy is month-to-month, and if not stated in the agreement, the amount of rent shall be the fair rental value of the rental unit, as compared to similar rental units. In the absence of a written agreement, the tenancy shall be month-to-month and the rent, if not otherwise evident from the situation, shall be the fair rental value of the rental unit, as compared to similar rental units.

(B) To adopt reasonable rules and regulations for the use and occupancy of a dwelling which are designed to promote the convenience, safety, or welfare of occupants.

(C) To have access to the dwelling for maintenance, repairs, decorations, alterations, or improvements to inspect the premises, to supply necessary or agreed services, show the dwelling to prospective buyers or tenants, or to otherwise have reasonable access to the premises. Such access must be at reasonable times when the tenant is present, and upon a notice of at least twenty-four (24) hours, except in situations involving an emergency, or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance maintaining that any services or repairs were not provided.

(D) To require that tenant comply with Ordinances or regulations regarding housing, health, safety, or public order, keep the premises reasonably clean and safe, dispose of all ashes, garbage, rubbish, and waste in a clean and safe manner, keep the premises and its parts in good repair, reasonably use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning or other facilities and appliances. Require the tenant to conduct himself and require others on the premises to conduct themselves in a way that will not disturb the peaceful enjoyment of others or abuse property, use all parts of the premises in a way they were intended or designed, and refrain

from destroying, defacing, damaging, or removing any part of the premises, or allow any other to do so.

(E) Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of possessions, nonpayment of rent, disconnected utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions.

(F) To apply to the Tribal Court in any action authorized by this Ordinance or law to enforce rights under this chapter.

§ 46.2-4 Landlord Obligations

Every landlord under this Ordinance has the following obligations:

(A) To maintain the dwelling in a decent, safe, and sanitary condition.

(B) To protect the right of quiet enjoyment of the dwelling to the tenant and regulate the conduct of other tenants and those with them does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of others.

(C) To comply with applicable tribal law or building or housing Ordinances.

(D) To make necessary repairs to put the premises in a fit and habitable condition, except where the premises are intentionally rendered unfit or uninhabitable by the tenant, a member of his family or other person on the premises with his consent, in which case such duty shall be the responsibility of the tenant.

(E) To keep common areas which are not assigned to a specific tenant in a clean and safe condition.

(F) To expeditiously repair, upon tenant notification, any premises defects hazardous to life, health or safety, the financial responsibility for which will lie with the tenant only if the defects result from damage caused by the tenant, tenant's household, or invitees.

(G) To maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of a tenant, except if such things are generated by an installation within the exclusive control of the tenant or supplied by a direct public service utility connection.

(H) To provide and maintain proper and appropriate receptacles and facilities (except for those of the individual tenant) for the proper disposal of ashes, garbage, rubbish, and other waste from the dwelling.

(I) To provide running water, hot water, and heat in accordance with applicable housing and health Ordinances, except to the extent the tenant is required to provide such for himself.

(J) To disclose, in writing, the name, address, and telephone number of any person authorized to manage the dwelling, the owner of the premises or his agent, the person responsible for receiving rent, notices, and demands under the Ordinance, and the person responsible for making repairs, where they are required. If such a disclosure is not made, then any person who receives payments or deals with a tenant as an apparent landlord or manager will be deemed to be the proper landlord for actions under this Ordinance.

(K) To give possession of the premises to the tenant in accordance with the agreement to occupy, and if rules and regulations are issued to communicate those rules and regulations to the tenant.

(L) To respect the rights of tenants as set forth in this Ordinance.

§ 46.2-5 Landlord Remedies

Where a tenant has not complied with this Ordinance or the agreement of the parties, the landlord has the right to:

(A) Give reasonable notice to the tenant to comply with his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.

(B) Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.

(C) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

§ 46.2-6 Tenant Rights

Each tenant under this Ordinance shall have the following rights:

(A) To quiet enjoyment of the premises and protection of that right by the landlord against offending persons or things that are under his control.

(B) To a warranty of habitability that the premises are decent, safe, sanitary and suitable for human occupancy.

(C) To receipt of reasonable notice, as provided by this Ordinance, for compliance with the agreement of the tenant, termination of an agreement, or eviction.

(D) To landlord compliance with applicable building or housing Ordinances.

(E) To a reasonable and effective means of dealing with the landlord or his agents, making complaints regarding the premises or agreement, and having them resolved in a reasonable manner, and otherwise having an effective opportunity to be heard and fairly treated.

(F) To adequate and timely maintenance and repair of the premises, facilities, and appliances the maintenance and repair of which are obligations of the landlord.

(G) To apply to the Tribal Court in any action authorized by this Ordinance or law to enforce rights under this chapter.

§ 46.2-7 Tenant Obligations

Every tenant under this Ordinance shall have these obligations:

(A) To pay rent, purchase payments, costs, fees, or damages in accordance with the agreement of the parties, this Ordinance, and applicable law.

(B) To immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.

(C) To maintain the premises in a safe and clean manner, and to otherwise maintain the premises as may be required by agreement or this Ordinance, and conduct himself in using the premises and common areas in a way which does not disturb the quiet enjoyment of others or cause a breach of the peace. These obligations include the duty to require that those who occupy or use the premises as guests or by invitation conduct themselves in a similar way.

(D) To not give up the premises to others, assign a lease agreement, sublease, provide accommodations for boarders, lodgers, or others who are not parties to the agreement over the premises without the permission of the landlord.

(E) To use the premises only for a personal and private dwelling as agreed, and not to use or permit its use for any other purpose, including refraining from illegal conduct or any other activity that is contrary to written or traditional law which may harm the physical or social environment of the premises or the area around it.

(F) To abide by necessary and reasonable rules and regulations made by the landlord that have been communicated to the tenant.

(G) To dispose of all ashes, garbage, rubbish and other waste, as well as junk, abandoned vehicles, or other unnecessary items, in a proper, sanitary, and safe manner.

(H) To use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances that are part of the premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.

(I) To refrain from destroying, defacing, damaging, or removing any part of the premises or common tenant areas, and to require family members and guests to act in like manner.

(J) To pay reasonable charges (other than for wear and tear) for the repair of damages to the premises or common areas caused by the tenant, his household or guests, or to make repairs for such damages where that is the obligation of the tenant, all within 30 calendar days of such damage, except as otherwise agreed upon by the parties.

(K) To conduct himself and cause other persons to conduct themselves in a way that will not disturb or injure neighbors, and in a way that will keep the dwelling and common areas in a decent, safe, and sanitary condition.

(L) To perform seasonal maintenance or other maintenance reasonably required by the agreement of the tenant or the reasonable rules and regulations of the landlord.

§ 46.2-8 Tenant Remedies

Where a landlord has not complied with this Ordinance or the agreement of the parties, the tenant has the following rights:

(A) To give reasonable notice to the landlord in writing to comply with his obligations, demand repairs which are the responsibility of the landlord, or terminate the agreement under which the tenant occupies the premises, in accordance with procedures outlined in this Ordinance.

(B) To require repairs or maintenance which are the responsibility of the landlord.

(C) Should landlord fail to make repairs, as duly noticed by tenant, within a reasonable time, tenant may make necessary repairs and deduct reasonable costs from the rent payment.

(D) To seek a Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

PART 3 TERMINATION OF RENTAL AGREEMENTS/TERMINATION NOTICE REQUIREMENTS

§ 46.3-1 Termination Procedures

An agreement of the parties for the rental of a premises, and for the lease/purchase of a premises, may be terminated in the following manner, unless otherwise provided in the Rental Agreement:

(A) No less than fourteen (14) calendar days prior to the termination of the rental agreement for

any failure to pay rent or other payments required by the agreement.

(B) No less than three (3) calendar days prior to the termination of the rental agreement for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

(C) No less than fourteen (14) calendar days in all other situations.

§ 46.3-2 Secretarial Approved Leases

Leases, agreements, or otherwise that have previously been approved by the Secretary are subject to the appeal procedures found in 25 C.F.R. Part 2.

PART 4 EVICTION PROCESS

§ 46.4-1 Grounds for Eviction

After proper notice terminating a tenant's tenancy, as set forth in Part 3 of this Ordinance, a tenant may be evicted from any premises, ordered to pay damages and costs, or otherwise be subjected to the order or judgment of the Tribal Court for the breach of any obligation under this Ordinance, any agreement, including an agreement to purchase or rent any dwelling, or for any other obligation provided by law. A tenant may be evicted for:

(A) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten calendar days following the first day of the month in a month-to-month tenancy.

(B) Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand, unless otherwise agreed to between the parties.

(C) Nuisance, property damage, or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

(D) Noncompliance with this Ordinance, building or housing Ordinances.

(E) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

(F) Failure to comply with any tenant obligation outlined in this Ordinance.

(G) Material breach of the lease or other agreement of the parties, or the reasonable rules and regulations of the landlord.

§ 46.4-2 Notice to Quit Requirements

Following a timely notice to terminate or cancel an agreement or a notice to a person who occupies a dwelling without an agreement to leave it, a tenant may be given notice to quit possession of the premises as follows:

(A) The notice must be addressed to the known tenants of the premises, although unknown occupants need not be named, and it shall state the reason(s) for the notice and state a date by which the tenant must leave the premises and surrender it to the landlord.

(B) Any notice which substantially complies with the following form will be sufficient:

To: [Name of Tenant] and occupiers of [address of premises or reasonable description of location]

From: [Name of Landlord]

You are required to quit possession or occupancy of these premises, move out, and return the possession of the premises to the landlord on or before [date] for the following reason(s): [state what they are]
[Name and address of the person giving notice, date, and signature]

(C) The notice must provide not less than eight (8) calendar days following the date of service of the notice to quit but not to exceed 30 days following the date of service of notice to quit, except in cases of emergency or nuisance or injuries as provided in § 46.4-1(C).

(D) All tenants shall be given (14) days from the date of service to quit possession of the premises in the case of non payment of rent.

(E) The Tribal Council shall be notified in cases where a Lease/Purchase Agreement or a mortgage is involved.

§ 46.4-3 No Self-Help Eviction

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit, and obtaining a Court order as provided in this Ordinance.

§ 46.4-4 Forcible Eviction

(A) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer in accordance

with the procedure in § 46.6-10. At the hearing where eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in § 46.4-5.

§ 46.4-5 Storage of Personal Property Following Forcible Eviction

Following forcible eviction of the defendant and/or other occupants, the former occupants' personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants must pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord must provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs must be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

PART 5 NOTICE PROCEDURES

§ 46.5-1 Notices Other Than Notices to Cancel or Terminate an Agreement

Any notice to a landlord or tenant to comply with the agreement of the parties or this Ordinance, other than a notice to cancel or terminate the agreement of the parties, may be given in any reasonable manner, or as provided by the agreement of the parties.

§ 46.5-2 Notices to Cancel or Terminate Agreements and Notices to Leave Premises

Any notice to cancel or terminate an agreement for the lease/purchase, use, or occupancy of a dwelling, or to leave a premises, must be in writing, and must be delivered to the tenant or landlord in the following manner:

(A) Delivery must be made by:

- (1) A law enforcement officer of the Tribe or an agency of the United States Government,
- (2) Any person authorized by the Tribal Court; or
- (3) Any adult person who is not a party to the action.

(B) Delivery will be effective when it is:

- (1) Personally delivered to a tenant with a copy delivered by first class mail, or
- (2) Personally delivered to an adult living in the premises with a copy delivered by first

class mail, or

(3) Personally delivered to an adult agent or employee of the landlord or the tenant with a copy delivered by first class mail.

(C) If the notice cannot be given by means of personal delivery, or the landlord or tenant cannot be found, the notice may be delivered by means of:

(1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or

(2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

(D) Notice must include a statement that the tenant may be represented or accompanied, at his own expense, by a person of his choice, including a representative of the Tribe.

§ 46.5-3 Copy of Notice/Proof of Service

The person giving notice must keep a copy of the notice and proof of service in accordance with this chapter, and be able to demonstrate service by affidavit or other manner recognized by law.

PART 6 COURT PROCEDURES

§ 46.6-1 Summons and Complaint

At any time after the expiration of the time set in the notice to quit, if the tenant or occupant of the premises refuses to quit possession or occupancy of the premises, the landlord may file a complaint in the Tribal Court for eviction and other relief. The complaint must state:

(A) The name and known address of the tenants against whom the suit is brought, but it need not state the names of any other occupants, who will be considered to be bound by a Court order;

(B) A description of the agreement of the parties or the terms under which the person being sued occupies the premises;

(C) The address or location of the premises in sufficient terms to allow a law enforcement officer to carry out any order of the Court;

(D) A description of the obligation the tenant has breached or the reason for the action;

(E) A statement showing that any required termination notices and the notice to quit have been served in accordance with the provisions of this Ordinance requiring them; and

(F) The relief demanded, including any claims for damages, fees, costs, or other special relief, which may include, in accordance with § 46.4-1, non-payment of rent or other costs between the time of notice and the Execution of Judgment described at § 46.6-12.

§ 46.6-2 Action Upon Filing Complaint

When a complaint is filed in the Tribal Court, it must be immediately presented to a Tribal Court Judge. This must be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge must review the complaint and must, if it appears to be in compliance with § 46.6-1, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance of answering the complaint must be no less than three (3) calendar days after the date of the order in matters involving a nuisance or injuries provided in §46.4-1(C) or ten (10) calendar days in all other cases.

§ 46.6-3 Commencement of Proceedings

(A) If the tenant appears before the Court in person or in writing to contest the complaint, the Court must set a hearing date. Any written response must state any defenses or factual disputes and where any defendant appears in person, a written response must be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.

(B) The Court must set a hearing date, no more than fifteen (15) calendar days following the date for appearance. When the hearing date would fall on a weekend or holiday, the date shall be the first regular Court day following that date.

(C) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the 15 day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in §46.4-1(C), and must not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

(D) The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

§ 46.6-4 Defenses

(A) Upon an appropriate showing, the Court must grant the remedies allowed in this Ordinance, unless it appears by the evidence that:

(1) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the

fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.

(2) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

(3) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord, and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.

(4) Due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

(5) There are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

(6) The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.

(7) There are any other material or relevant fact, which the tenant might present, that may explain why his eviction is unjust and unfair.

(B) No defense may be founded upon either of the grounds listed in (A)(1) or (A)(2) unless:

(1) the obligation to maintain or repair is that of the landlord under this Ordinance or the agreement of the parties, and a clear and reasonable demand was made by the tenant to correct such conditions or the landlord knew of them; and

(2) the landlord has had a reasonable opportunity to maintain or make repairs and the tenant has been cooperative in allowing them.

§ 46.6-5 Discovery and Pre-hearing Proceedings

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery must be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery, altering the time requirements of this paragraph or protecting the rights of the parties upon reasonable notice.

§ 46.6-6 Evidence

Evidence in proceedings under this Ordinance shall be according to the following provisions:

- (A) All evidence may be admitted which can be shown to be relevant and material to the case.
- (B) Fairness will dictate the decision of the judge on challenges to admissibility of evidence.
- (C) The Court may avail itself of any recognized and authoritative materials, books or documents as guidance in reaching a decision on the admissibility of evidence.
- (D) Evidence of customs and traditions of the Tribes shall be freely admitted.
- (E) Hearsay objections will not be permitted to procedurally deny the Court access to reasonably reliable information which would aid in reaching a just decision. Where a hearsay objection is made, the Court will make an independent determination of the competency of the evidence which is sought to be offered. Objections may be overruled where facts indicate that the evidence is relevant and material and reasonably competent under the circumstances. Hearsay evidence may be freely admitted where all parties to the out of Court statement are present before the Court and qualified to testify as to the statement made.
- (F) At the discretion of the Judge, evidence may be excluded if its value as proof is outweighed by the risk that its admission will create a substantial risk of undue prejudice, confuse the issues or mislead the jury, or unfairly surprise the opposing party.
- (G) Upon request of a party, the Court may take judicial notice of specific facts which are so certain as not to be subject to reasonable dispute.

§ 46.6-7 Burden of Proof

The burden of proof in all proceedings under this Ordinance shall be clear and convincing evidence.

§ 46.6-8 Judgment

(A) Within five (5) calendar days of the date of the hearing, the Court must grant and enter judgment and the judgment must grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord;
- (2) Grant actual damages as provided in the agreement of the parties or this Ordinance, including interest;
- (3) Order the parties to carry out an obligation required by law;

- (4) Establish a payment plan for the tenant;
- (5) Order rent payments to be taken out of per capita payments or through garnishment;
- (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
- (7) Remedy the action - in part or in whole - through appropriate recalculation of rent;
- (8) Remedy the action - in part or in whole - through a conversion from a lease/purchase agreement to a rental tenant status;
- (9) Order the tenant to perform work for the landlord or Division of Community of Housing to pay off back rent due and/or damages;
- (10) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation; or
- (11) Grant any relief provided in this Ordinance or allowed in law or equity.

(B) If a defendant fails to appear in person or in writing on or before the date of appearance, the Court must enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

§ 46.6-9 Form of Judgment

The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it.

§ 46.6-10 Execution of Judgment

- (A)
- (1) In an action for eviction, if the court finds that the plaintiff is entitled to possession, the order for judgment shall be for the restitution of the premises to the plaintiff and for such other relief that the court orders in accordance with this Ordinance.
 - (2) At the time of ordering judgment for the restitution of premises, the court shall order that a writ of restitution be issued, and the writ may be delivered to a tribal law enforcement officer for execution in accordance with (B) of this section. No writ shall be executed if received by a tribal law enforcement officer more than 30 days after its issuance.
 - (3) Upon a judgment in favor of the plaintiff, the plaintiff may request a writ of restitution from the Court. Upon such request, the Court shall provide the defendant with reasonable notice and opportunity to be heard on the matter of the issuance of a writ.

(a) The writ shall be of sufficient specificity to enable a law enforcement officer to execute the writ.

(B) Upon delivery of a writ of restitution to a tribal law enforcement officer, and after the payment of any applicable fees for the officer to execute the writ, the officer shall execute the writ. In executing the writ of restitution a tribal law enforcement officer shall:

(1) Remove from the premises described in the writ the person of the defendant and all other persons found upon the premises claiming under the defendant, using such reasonable force as is necessary.

(2) Remove from the premises described in the writ, using such force as may be necessary, all personal property found therein not the property of the plaintiff.

(3) Exercise ordinary care in the removal of all persons and property from the premises and in the handling and storage of all property removed therefrom.

§ 46.6-11 Stay of Execution

Unless the losing party is a tenant against whom a landlord has filed at least three (3) tenant termination notices according to Part 3 of this Ordinance, the losing party may apply for a stay of execution of the judgment or order, if:

(A) Good and reasonable grounds affecting the well-being of the party are stated; or

(B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or

(C) A bond is posted or monies are paid, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of appeal or a reasonable period of time following the judgment is deposited with the Court.

§ 46.6-12 Appeals

Appeals under this Ordinance shall be handled according to the general tribal appellate provisions, with the exception that the party filing the appeal shall have only five (5) days from the entry of the order of judgment to file a notice of appeal. All orders from the Court will remain in effect during the pendency of an appeal under this Ordinance unless otherwise ordered by the Court. If applicable, a party may utilize the appeal procedures of 25 C.F.R. Part 2.

§46.6-13 Appeal Bond

Any party seeking an appeal from a judgment under this Ordinance must pay a reasonable bond in an amount to be determined by the Court. An appeal bond may be waived upon a showing by the party seeking appeal that he is indigent and otherwise unable to post such a bond.

§ 46.6-14 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this Ordinance may be made under the general tribal civil procedure Ordinance and/or tribal small claims procedure Ordinance.

PART 7 **MORTGAGES AND FORECLOSURES**

§ 46.7-1 **Priority**

(A) All mortgages, including Leasehold Mortgages recorded in accordance with the recording procedures set forth in this Ordinance and including loans guaranteed or held by the U.S. Government, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of the mortgage.

(B) All leases on trust lands and mortgages or other encumbrances on trust leases must be approved by the Secretary. In addition to the recording procedures set forth in this chapter, all leases and encumbrances must be recorded at the Indian Land Titles Office in Aberdeen, South Dakota. Leases or encumbrances not approved by the Secretary shall not be considered valid.

§ 46.7-2 Recording

(A) The Tribal Recording Clerk shall maintain in the Division of Community Housing or other designated agency a system for the recording of mortgages and such other documents as the Tribe may designate by laws or resolution.

(B) The Tribal Recording Clerk shall endorse upon any mortgage or other document received for recording:

- (1) The date and time of receipt of the mortgage or other document;
- (2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received; and
- (3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

_____ Tribe)
 _____)ss.
 Indian Reservation)

I certify that this is true and correct copy of a document received for recording this date.
Given under my hand and seal this ____ day of _____.

(SEAL)

(Signature)

(Date)

The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

(C) The Tribal Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:

- (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
- (2) The name(s) of the Lender/Mortgagee of each Leasehold Mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
- (4) The date and time of the receipt;
- (5) The filing number assigned by the Tribal Recording Clerk; and
- (6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

(D) The certified copies of the mortgages and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

§ 46.7-3 Leasehold Mortgage Foreclosure Procedures

(A) A Borrower/Mortgagor shall be considered to be in default when they are thirty (30) days past due on their mortgage payment(s) to the Lender/Mortgagee, or under the terms of the Leasehold Mortgage agreement.

(B) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on their mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee must complete the following:

- (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the

Borrower/Mortgagor at the mortgaged property.

(2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive any relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

(C) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.

(D) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender must advise the Borrower/Mortgagor in writing by mail or by posting prominently on the mortgaged property, with a copy provided to the Tribe, as follows:

(1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.

(2) Advise the Borrower/Mortgagor of home ownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(4) Notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable U.S. Government agency to accept assignment of the Leasehold Mortgage if this is a requirement of the U.S. Government program.

(5) Notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the U.S. Government if the mortgage is assigned.

(6) Provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

(E) If a Borrower/Mortgagor has been in default under a Leasehold Mortgage for ninety (90) days or more and the Lender/Mortgagee has complied with the procedures set forth in the first part of this section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth in § 46.7-4 of this Ordinance.

§ 46.7-4 Leasehold Mortgage Foreclosure Complaint and Summons

(A) The verified complaint in a Leasehold Mortgage foreclosure proceeding shall contain the following:

(1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a tribal leasehold), as a defendant;

(2) A description of the property subject to the Leasehold Mortgage;

(3) A concise statement of the facts concerning the execution of the lease and the Leasehold Mortgage; the facts concerning the recording of the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, if a leasehold mortgage then a copy of the lease, the mortgage, or assignment thereof relating to the property (Appended as exhibits to the complaint); and

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) tribal Ordinances, Codes and regulations; and/or (3) provisions of the lease or leasehold mortgage.

(B) The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

§ 46.7-5 Service of Process and Procedures

Service of process shall be carried out according to the procedures for landlords and tenants set forth in Part 5 of this Ordinance.

§ 46.7-6 Rules of Civil Procedure

The rules of civil procedure set forth in Part 6 of this Ordinance shall govern proceedings under this chapter.

§ 46.7-7 Cure of Default by Subordinate Lienholder

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. There shall be no right of redemption in any Leasehold Mortgage foreclosure proceeding. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage.

§ 46.7-8 Judgment and Remedy

The complaint shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the

Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(A) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholders, in the Lease and Leasehold Mortgage, and

(B) Assigning the Lease to the Lender/Mortgagee or the Lender's Designated Assignee subject to the following provisions;

(1) The Lender must give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.

(2) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member or the Tribe.

(3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member or the Tribe during the remaining period of the leasehold.

§ 46.7-9 Foreclosure Evictions

(A) Unlawful Detainer: A lessee under a leasehold mortgage, Mortgagor, or other occupier of land shall be guilty of unlawful detainer if such person shall continue in occupancy of real property under any of the following situations:

(1) Under a leasehold mortgage, without the requirement of any notice:

- (a) After the expiration of the term of the lease or other agreement; or
- (b) If such person has entered onto or remains on the real property of another without the permission of the owner and without having any substantial claim of a lease or title of the property; or
- (c) After the Tribe has terminated such person's tenancy pursuant to procedures providing such person a hearing before the tribal agency involved; or
- (d) After the interest of such person in a lease has been foreclosed in a leasehold mortgage foreclosure proceeding in the Tribal Court.

(2) After having received thirty (30) calendar days' notice, the lessee, mortgagor, or occupier shall remain in possession of the property contrary to the terms of the notice as follows:

(a) When such person has received notice;

- (i) That he is in default in the mortgage payments; and
- (ii) Requiring him to either pay or surrender possession of the occupied property; and such person has remained in possession after receipt of such notice without either surrendering possession of the property; or

(b) When the lease of the property is for an indefinite time, with payments to be made monthly or by some other period, and the lessor has given notice of termination of the tenancy at least thirty (30) calendar days prior to the end of such month or period; or

(c) When such person shall continue to fail to keep or perform any condition or covenant of the lease or agreement under which the property is held after he has been given notice to surrender the property; or

(d) When such person continues to commit or to permit waste upon or maintain a nuisance upon the occupied property following notice, to either cease such waste or maintenance of nuisance or to surrender the property.

(B) Complaint and Summons: The owner of real property or the lessor or the U.S. Government or other government or private lender shall commence an action for unlawful detainer by filing with the Court, in writing, the following documents:

(1) A complaint as described for landlord/tenant cases at § 46.6-1; and

(2) A summons, issued as in other cases, requiring the defendants to appear in tribal court upon the complaint on a date and time specified in the summons. The trial date specified in the summons shall not be less than six (6) or more than thirty (30) calendar days from the date of service of the summons and complaint. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file an answer with the Court an answer and appear for trial at the time, date, and place specified in the summons.

(C) Service of Summons and Complaint: A copy of the summons and complaint shall be served upon the defendant(s) in the manner provided by the Tribal Court rules for service of process in civil matters.

(D) Power of the Tribal Court:

(1) The Tribal Court shall enter a Writ of Restitution if:

(a) Notice of suit and trial is given by service of summons and complaint in accordance with the procedures provided in this document; and

(b) The Tribal Court finds that the occupier of the real property has committed an act of unlawful detainer.

(2) Upon issuance of a Writ of Restitution, the Tribal Court shall have the authority to enter against the defendant(s) a judgment for the following: back payments; unpaid utilities; charges due the Tribe, or land owner, or lender under any lease, Leasehold Mortgage or occupancy agreement, and for damages caused by the defendants to the property other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party his costs and reasonable attorney's fees in bringing suit.

(E) Continuances in Cases Involving the Secretary: In cases involving the U.S. Government no continuances shall be issued, and the Writ of Restitution shall be enforced no later than sixty (60) calendar days from the date of service of the summons and complaint, unless all of the parties agree otherwise.

(F) Enforcement: Upon issuance of Writ of Restitution by the Tribal Court, tribal law enforcement officers shall enforce the Writ of Restitution by evicting the defendant(s) and their property from the premises which are unlawfully occupied. In all cases involving the U.S. Government, the Writ of Restitution shall be enforced not later than sixty (60) calendar days after the date of service of the summons and complaint.

§ 46.7-10 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

§ 46.7-11 Certified Mailing to Tribe and Lessor

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the Great Lakes Agency of the Bureau of Indian Affairs.

§ 46.7-12 Intervention

The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Ordinance. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

§ 46.7-13 Appeals

Appeals under this part shall be handled in accordance with the general tribal appellate provisions, and in accordance of 25 C.F.R. Part 2.

§ 46.7-14 Sample Residential Home buyer Lease

Home ownership leases under the auspices of an applicable federal agency program or made in conjunction with a loan from a private lender shall be made substantially in this form.

LEASE OF LAND

THIS LEASE is entered into this _____ day of _____, _____, between the Stockbridge-Munsee Tribe ("Lessor"), with offices at P.O. Box 70, Bowler, WI 54416 and _____, ("Lessee(s)"), of _____, Wisconsin, whose mailing address upon completion of improvements to be financed with the loan referred to herein will be _____.

1. **Description of Property.** The Lessor hereby leases to the Lessee the following described property, located in Shawano County, State of Wisconsin:

together with all buildings and improvements thereon not already belonging to Lessee and all rights thereto appertaining.

2. **Term of Lease.** The term of this Lease shall be _____ years (not to exceed twenty-five years) from the date of the closing of a loan with a federal lending agency or a private lender ("Lender"), provided the date is within one year from the date of Secretarial approval of this Lease. If a loan made or guaranteed by a Lender is outstanding at the expiration of the lease term, then this Lease shall automatically be extended for a period of _____ years (time sufficient to cover the loan period). If no such loan is outstanding at the expiration of the Lease term, then this Lease may be extended for an additional term of _____ years, with the mutual consent of the parties. The effective beginning date of this Lease shall be noted in this Lease by attachment of a copy of the promissory note which by reference is made a part hereof. **If a loan is not closed within the one year, this Lease will not take effect and will be null and void.**

3. **Rental Rate.** The Lessee will pay annually to the Treasurer of the Stockbridge-Munsee Tribal Council an annual sum for the rent of the leased premises in the amount of \$_____, said rent to be paid prior to delivery of this Lease to the said Lessee and on or before each anniversary date thereafter, unless said rent shall exceed \$_____ in which case said rent shall be paid in _____ equal installments. The amount of the rent will be reviewed at five (5) year intervals by the Lessor for purposes of determining if the rent is fair, equitable and reasonable based on economic conditions of the Lessor and the Lessee. Adjustments in rent must have prior written approval of Lender. It is understood and agreed between the parties hereto that, if any installment of rental is not paid within thirty (30) days after becoming due, interest at the rate of eight (8) percent per annum will become due and will run until said rent is paid. Lessor shall provide Lessee of notice of default within the thirty (30) day period.

4. **Conditions:**

A. It is mutually agreed by the Lessor and the Lessee that the express purpose of this Lease is to enable the Lessee to obtain a loan from a federal agency agreed upon by the

Lessee or from a private lender for renovation, new construction or purchase of a home.

B. The Lessor, in consideration of the granting of such loan by the Mortgagee to the Lessee, hereby consents thereto and grants permission to the Lessee to execute and deliver to the Mortgagee a Real Estate Mortgage covering the Lessee's leasehold interest in and to the property above described including improvements now existing thereon or which may be constructed thereon.

C. The Lessor agrees that this Lease may not be terminated for any reason without the written consent of the Mortgagee as long as any of the indebtedness secured by the mortgage remains unpaid. This provision shall apply to any attempted termination by surrender of the leasehold interest. Upon the Lessor obtaining the Mortgagee's consent or after termination of the Mortgagee's interest in the leased premises, the Lessee agrees that if the Lessee shall fail to comply with, or shall violate any of the provisions of this Lease, the Lessor or his authorized representative may declare the Lease forfeited after giving sixty (60) days written notice, and may thereupon take such action to repossess the premises and such other action as may be necessary to protect the interest of the Lessor as provided for by law, but such forfeiture shall not release the Lessee from paying all rents and other obligations contracted for or from damages for such failure or violation; PROVIDED, however, that in the event of such declared forfeiture, the Lessee's liability for rent contracted for shall extend only for the duration of that particular annual rental period for which said Lessee, pursuant to the provisions stated herein, would have paid in advance and not for the entire unexpired term of said Lease, whatever said unexpired term may be at the time of said declared forfeiture. After the termination of the Mortgagee's interest in the leased premises, this Lease may be terminated upon the failure of the Tenant to comply with any of the provisions of this Lease.

D. Lessee understands and agrees that any and all use rights heretofore held by Lessee(s) in the premises, are extinguished through the signing of this Lease and that the Lessee shall hereafter hold rights only by virtue of this Lease.

E. Upon expiration of this Lease, or upon its termination in accordance with terms hereof, unless such termination is due to default upon the part of the Lessee(s), Lessee(s) or any successors in interest shall be entitled to full enjoyment of the premises and Lessee(s) shall have the right to reassume their land assignment and all rights thereunder. If not so eligible, Lessee(s) and any successors in interest shall, upon demand, surrender to Lessor upon expiration or other termination of this Lease complete and peaceable possession of the premises and any or all improvements thereon, which shall be the property of the Tribe. Personal property shall remain the Lessee's property. Lessee hereby agrees that in the event this Lease is not renewed or extended and the land assignment is not reassumed, the Lessee shall have the right to remove the improvements placed on the leased premises with the loan obtained under section 4(a) within thirty (30) days of the said termination date. In the event the Lessee removes said improvements, Lessee shall be responsible for the costs of renovation of the premises, which renovation shall include removal of foundations, sanitary septic systems, sidewalks, fences, and the filling, leveling and seeding of the ground to restore the original condition as may be

determined in writing by the Lessor as being in the best interests of the Lessor. At Lessor's option, a bond may be required to assure compliance with such restorations prior to the removal of improvements in an amount sufficient to assure such restoration.

F. The Lessee will keep the buildings, fences and other improvements on the premises in good repair and condition, excepting ordinary wear and tear, loss by fire, or unavoidable depreciation for destruction. The Lessee shall properly conceal all legal refuse areas. The Lessee shall be responsible for construction and maintaining all improvements which may be required by applicable law and Lessee shall indemnify and save harmless the Lessor against all action, claims and damages by reason of the Lessee's failure to keep and maintain said premises and the improvements thereon as provided hereinabove or by reason of Lessee's non-observance of any applicable laws, ordinances or regulations. The Lessor shall not be liable for any loss, damage or injury of any kind whatsoever to the person or property of the Lessee or sublessee or any of the Lessee's or sublessee's employees, guests, or invitees, or of any other person whatsoever, caused by any use of the leased premises, or by any defect in any building, structure, or other improvement erected thereon, or arising from any accident on said premises or any fire or other casualty thereon, or occasioned by the failure on the part of the Lessee's or sublessee's employees, guests, or invitee or arising from any other cause whatsoever; and the Lessee, as a material part of the consideration of this Lease, hereby waives, on Lessee's behalf, all claims and demands against the Lessor and agrees to indemnify and save Lessor free and harmless from liability for all claims and demands for any such loss, damage, or injury, together with all costs and expenses arising therefrom and in connection therewith.

G. If the Lessor shall sell or otherwise transfer title to the premises, he will do so subject to the provision of this Lease.

H. The terms of this Lease shall be binding upon the heirs, executors, and administrators, and successors and assigns of both Lessor and Lessee in like manner as upon the original parties.

I. The Lessor warrants that he has the right to lease the premises and will defend the Lessee's possession against any and all persons whomsoever.

J. No member of, or delegate to Congress shall be admitted to any share or part of this contract or to any benefit that may arise here from, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

K. The Lessee agrees that he will not use or cause to be used any part of said premises for any unlawful purpose.

L. The Lessee or his successors in interest shall pay, if any, if and when the same become due and payable, all taxes, general and special assessments and other like charges including any and all license fees or charges properly assessed which may be levied, assessed or imposed during the term of this Lease upon or against the leased land

and all interest therein and improvements and other property thereon for which either the Lessee or Lessor may become liable in relation thereto and Lessee shall hold harmless the Lessor from any such taxes and claims, or sale or other proceedings to enforce payment thereof. Should Lessee fail to pay any such taxes, liens or claims when due, Lessor may at its option, upon written notice to Lessee, settle or discharge any such taxes, claims, etc., and demand reimbursement by the Lessee together with interest thereon at the current local commercial bank rate. Failure to make such payment within thirty (30) days of Lessor's demand shall constitute a breach of this Lease, and the Lessor may declare this Lease immediately ended with Lessee forfeiting the rent paid for that year, subject to the nontermination provision of section 4(C) and subject to the appeal procedures in 25 C.F.R. Part 2. This provision shall not prohibit Lessor from pursuing its remedies at law to recover the amount it paid. In addition to the rents, taxes and other charges herein provided, Lessee shall pay all charges for water, sewer, gas, oil, electricity, telephone and any other utility services applied for and used on said premises.

M. Merchantable timber within the leased area shall remain the property of the Lessor and there shall be no removal of any trees except with the written approval of the Lessor's Forestry Department.

N. It is understood and agreed that this lease, or any amendment thereto, or encumbrance thereunder shall be valid only after approval by the Secretary of Interior or his authorized representative, delegate or successor. Approval of this Lease will not constitute an approval of a mortgage secured in the loan from or guaranteed by Lender. Subsequent mortgages, loans, or other encumbrances require separate approval from the Secretary. No assent, express or implied, to any breach of any of the Lessee's covenants shall be deemed to be a waiver of any succeeding breach of any covenants.

O. The Lessor shall justly compensate the Lessee for any impairment of Lessee's rights under this Lease or of Lessee's unobstructed use of the leased premises resulting from any condemnation of the land subject to this Lease or from the Lessor's grant of any easement or rights-of-way concerning said land. Lessor shall not voluntarily grant any right of use to the subject premises that would materially interfere with the Lessee's rights to or use of the premises without the written permission of the Lessee and the Mortgagee, if the indebtedness remains outstanding. Unless the mortgage interest has been terminated, any payment resulting from condemnation, or the Lessor's voluntary grant, shall be made jointly payable to the Lessor and the Mortgagee.

P. The Lessee, his heirs, successors, executors, administrators and assigns, shall be required to comply with all applicable laws and regulations covering sanitation, plumbing, electrical, building, and other relevant codes. Lessee agrees to pay the prevailing fee in Shawano County for a building inspection, if required by the Lessor. Lessor may require that the inspection be done by the Shawano County Building Inspector, however Shawano County shall not have jurisdiction to enforce their codes. Lessor has primary jurisdiction for adoption and enforcing such codes. Lessor may, however, base its codes on Shawano County's codes. The Lessee shall comply with all applicable Federal and Tribal regulations regarding leasing. After the termination of the Mortgagee's interest in the leased premises; the Lessee must obtain the prior approval of

the Lessor before any improvements of any kind are constructed on the leased premises.

Q. The Lessor and its authorized representatives shall have the right, at any reasonable time during the term of this Lease, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon. After the termination of the Mortgagee's interest in the leased premises, this Lease or any right to or interest in this Lease or any of the improvements on the leased premises may not be encumbered without the prior written approval of the Lessor, and no such encumbrance shall be valid without said approval. The Lessor reserves the right to require any terms and condition before any encumbrances may be made as to the leased premises as it feels will best protect the Lessor's interest in the leased premises.

R. Any notice required by or sent pursuant to any provision of this Lease shall be sufficient if it is sent by first-class certified mail. In the case of the Lessee, to the lessee's last known mailing address stated above and in the case of the Lessor to the Lessor at the Lessor's mailing address stated above. Notice to Mortgagee shall be mailed to address provided to Lessor by Mortgagee or other lender. The Lessee agrees to pay and discharge all reasonable costs, attorney's fees and expenses that shall be made and incurred by the Lessor in enforcing the covenants and agreements of this Lease.

S. While the leased premises are in trust or restricted status, all of the Lessee's obligations under this Lease, and the obligation of his sureties, are to the United States as well as to the equitable owner of the land.

T. Nothing contained in this Lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the Lease; however, such termination shall not serve to abrogate the Lease. The equitable owners of the land and the Lessee and his surety or sureties shall be notified of any such change in the status of the land.

5. **Sovereign Immunity.** Lessor acknowledges and agrees that upon the occurrence of a breach of any of its obligations under this Lease, the Lessee and/or any Mortgagee or Lender, or its successors or assigns, may protect and enforce its rights by appropriate judicial proceedings against Lessor to be held exclusively within the courts of the Tribe. Such rights shall include, without limitation, the right to pursue any applicable Stockbridge-Munsee Tribal law to enforce the terms of this Lease. This waiver of immunity is not intended, nor shall it be construed to, by implication or otherwise, waive the immunity of the Tribe from suit in any way to any issue not directly arising under this Lease.

6. **Assignment.** The Lessee shall not assign the Leasehold Estate without prior written consent of the Lessor. Nothing in the Lease shall prevent the Lessee, with the Lessor's and Secretary's consent, from executing and recording a mortgage, declaration of trust and/or other security instrument as may be necessary or appropriate to obtain financing. In the event of default on any mortgage or other loan agreement by the Lessee on the Leasehold Estate, the lender may commence foreclosure proceedings by the terms of this Ordinance.

7. **Right of First Refusal.** Subsequent to Lessee's breach of any covenant or agreement under a mortgage or security instrument for which the Lease or any improvements on the Leasehold Estate are pledged as security, and upon the expiration of any applicable cure period provided Lessee therein, the Lessor shall have the right of first refusal to acquire the Lessee's Leasehold Estate (subject to all valid liens and encumbrances) upon either payment in full of all sums secured by the mortgage or assumption of the loan evidenced by the note and mortgage and execution of an assumption agreement acceptable in all respects to the Lender. This right of first refusal may be exercised at any time within thirty (30) days of the date of the Lender's written notice to the Lessor of the Lessee's failure to cure the default in accordance with the terms of the Lender's written notice to the Lessor of the Lessee's failure to cure the default in accordance with the terms of the Lender's acceleration notice to the Lessee under the mortgage or other security instrument requiring the Lessor to pay all sums secured by the mortgage, which notice shall be given before the Lender or successor invokes any other remedies provided under the mortgage or by law. This right of first refusal shall be exercised by notice in writing from the Lessor to the Lessee and the Lender. The Lessor's right of first refusal to acquire the Lessee's interest in the Leasehold Estate, such right of first refusal shall be subject to any right the Lessee may have under the mortgage or by law to reinstatement after the acceleration, and right to bring a court action to assert the non-existence of a default or any other defense to acceleration and sale foreclosure.

The estate acquired by the Lessor through exercise of the right of first refusal shall not merge with any other estate or title held by the Lessor as long as the Leasehold Estate and/or any improvements on the Leasehold Estate, or any interest therein, are mortgaged or otherwise pledged as security for any loan, and the Leasehold Estate shall remain subject to any valid and subsisting mortgage or other security instrument.

8. **Foreclosure.** In the event the Lender acquires the Leasehold Estate by foreclosure of the mortgage, declaration of trust and/or other security instrument or assignment of the Leasehold Estate in lieu of foreclosure (for which foreclosure or assignment in lieu of foreclosure shall not require approval of the Lessor or the Secretary) then:

- (a) The Lender will notify the Lessor in writing of the availability of the Leasehold Estate and the Improvements for sale, the sales price and any other terms of sale;
- (b) If a purchaser is found who is an enrolled member of the Tribe, the Lease will be transferred by the appropriate federal agency or private lender to the purchaser, with the written consent and approval of the Tribe.
- (c) If a purchaser cannot be found, the appropriate federal agency or private lender shall be entitled to sublease the leased premises to any enrolled member of the Tribe wishing to sublease the same. The term of the initial sublease period and any succeeding periods shall not exceed one year each. A purchaser approved by the Tribe must wait, where the leased premises are sublet, until the expiration of any current sublease before occupying the premises.

IN WITNESS WHEREOF, the parties have signed and sealed the Lease on the date

first above written.

STATE OF WISCONSIN)
) SS
COUNTY OF SHAWANO)

I, _____, Lessee(s) of the property described herein depose and say the I am leasing the land herein described above for my own use and benefit and not directly or indirectly for the benefit of any other person or corporation, that I, Lessee have no agreement, arrangement or understanding with any corporation whereby the said land or any part thereof, shall or may be used, enjoined or occupied by or for the benefit of any person or corporation other than myself.

LESSOR:

LESSEE:

DATE: _____

DATE: _____

Subscribed and sworn before me this _____ day of _____, 19____, the above named _____, to me known to be the person who signed and executed the foregoing instrument.

Notary Public State of Wisconsin
County of Shawano
My Commission Expires:

Approved By:

Stockbridge-Munsee Tribal Council
Date: _____

Bureau of Indian Affairs
Date: _____

LEGISLATIVE HISTORY

1. Approved by Tribal Council on August 20, 1996 by Resolution Number 054-96.
2. Amendments pending.
3. Approved by Tribal Council on January 19, 1999 by Resolution Number 05-99.
4. Not approved by the Great Lakes Agency, Bureau of Indian Affairs on February 22, 1999.
5. Modified and approved by Tribal Council on April 8, 1999 by Resolution Number 19-99

6. Approved by Bureau of Indian Affairs May 11, 1999.